IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITIONS NO.138/2002, 172/2002 & 180/2002

WRIT PETITION NO.138/2002

Mr. Tanveer Khatib,
Major of age, Resident of
179/30, Alto Bella Vista,
Sangolda, Bardez, Goa. .... Petitioner.

V/s.

1. State of Goa
through its Chief Secretary,
having office at Secretariat,
Panaji, Goa.

2. The Director General of Police,
Police Headquarters,
Panaji, Goa.

3. Shri Datta Guru Sawant,
residing behind Laximibai
Talaulikar Hospital,
Boca de Vaca, Panaji, Goa.

4. Milind M. Bhuimbar,
age 22 years, residing at
House No.1012/17,
Goa Police Housing Co-op. Soc.
Jos Waddo, Succurro,
Porvorim, Bardez, Goa 403 501,

5. Loveleen Jeane Dias,
major of age, residing at
C/o. Delia Dias,
Bambolim, Ilhas, Goa.

6. Navlesh Suresh Dessai,
major of age, residing at
Veroda, Cuncolim, Goa.

7. Paresh Rajanikant Navelkar,
major of age, residing at
H.No.325, Durgawadi,
Taleigao, Ilhas, Goa.

8. Devyani H. Ambetkar,
major of age, residing at

H.No.161, Cobo Vaddo,
Tivim, Bardez, Goa.

9. Ramkrishna S. Mangeshkar,
major of age, residing at
D-3-E, Govt. Quarters,
Altinho, Panaji, Goa.

10. Roopa A. Kharde,
major of age, residing at
H.No.87-39,
Near Govt. High School,
Pandavwadi, Headland Sada,
Vasco-da-Gama, Goa.

11. Deepak Madhuker Pednekar,
major of age, residing at
H.No.248, Caper Wada,
Curti, Ponda, Goa.

12. Pravin Prakash Gawas,
Major of age, residing at
H.No.899, Gokulwadi,
Sanquelim, Bicholim, Goa.

13. Tejaswini K. Gaunker,
Major in age, residing at
B1-F4, Vijayaanagar Housing
Society, Corlim,
Ilhas, Goa 403 110.

14. Virendra B. Veluskar,
major of age, residing at
H.No.280, Behind Kamat Plaza,
Near Shri Ganesh Temple,
St. Inez, Panaji, Goa.

15. Krishna P. Sinari,
major of age, residing at
H.No.153, Pimpal Wada,
P.O. Marcela, Amona,
Bicholim, Goa.

16. Narayan A. Chimulkar,
Major of age, residing at
B-1-12, Police Quarters,
Porvorim, Goa.

17. Kalindi G. Naik Burye,
major of age, residing at
House No.87, Souza Vaddo,
Quitla, Aldona, Bardez, Goa.

18.Praven Powar,
major of age, residing at
D/A-3, H.No.1012/2,
Goa Police Housing Co-op. Society,
Zoswaddo, Succorro,
Porvorim, Bardez, Goa.

19.Prajyot S. Fadte,
major of age, residing at
Akhada, St. Estevem, Ilhas, Goa.

20. Nilesh K. Dhaigodkar,
major of age, residing at
H.No.D-17, at Dhaigodem,
Keri, P.O. Kerim,
Ponda, Goa.

21. Shailesh A. Narvekar,
Major of age, residing at
H.No.2, Maimulem,
Vasco-da-Gama, Goa 403 802.

22. Sanjay G. Dalvi,
major of age, residing at
C-10-6, Junta Quarters,
Pajifond, Margaon, Goa.

23. Tushar G. Lotlikar,
Major of age, residing at
St. Anthony's Ward,
Guirim, Bardez, Goa.

24. Kapil alias Ramnath B.
Nayak major of age, residing
at H.No.183, Dhoirem,
Rivona Via Quepem, Goa 403 705.

25. Brendan E.F. D'Souza,
major of age, residing at
H.No.217, Bairo Alto,
Ribandar, Goa 403 006.

26. Sudesh M. Velip,
Major of age, residing at
H.No.33, Velipwada,
Kavrem, Quepem, Goa.

27. Paresh G. Naik,
Major of age, residing at
Lotus Apartment,
F.L. Gomes Road,

Vasco-da-Gama, Goa.

28.Rahul T. Parab,
major of age, residing at
B/2, Asilo Hospital Qtrs.,
Feiro Alto, Mapusa Goa- 403 507.

29. Pradeep M. Tamhanker
Major of age, residing at
H.No.98/1, P.O. Tivim
Industrial Estate, Karaswado,
Bardez, Goa.

30. Ravindra D. Dessai,
Major of age, residing at
Canacona, Goa.

31. Neenad G. Deulkar,
major of age, residing at
Post Sal, Madlawada,
Assonora, Goa.

32. Bristano Peixoto,
Major of age, residing at
H.No.56/B, Cavorim,
Covatem, Chandor,
Goa - 403 714.

33. Job Rajesh,
Major of age, residing at
C/o. Thomas Job,
Nagargao, Valpoi,
Goa 403 506. ..... Respondents.

Mr. S.D. Lotlikar, Sr. Advocate with Mr. A.D. Bhobe, Advocate for the Petitioner.

Mr. A.N.S. Nadkarni, Advocate General with Mr. H.R. Bharne, Govt. Advocate for respondents No.1 and 2.

Mr. S.K. Kakodkar, Sr. Advocate with Mr. Joel J. de Souza, Advocate for respondents No.3 to 33.

WRIT PETITION NO.172/2002

1. Shri Shankar alias Sameer
Kamat, r/o. H.No.E-161, Aquem
Alto, Margao, Salcete, Goa.

2. Shri Roque Richard Rebello,
r/o. H.No.302, Davonderi,
P.O. Fatorda, Margao, Goa 403 601,

3. Kum. Shami Rasaikar,
r/o. Block-I, L-199,
Housing Board, Gogol,
Margao, Goa.

4. Shri Vincent R.S. D'Cunha,
r/o. Corlim - Volwaddo,
H.No.74, P.O. Corlim Industrial
Estate, Ilhas, Goa 403 110.

5. Shri Sawant Premnath Soiroji,
r/o. H.No.570, Dhargalem,
Pernem, Goa.

6. Areena Monica D'Silva,
r/o. H.No.124, Opp. Margao
Urban Co-Op. Bank,
Old Market, Margao, Goa.

7. Kum. Supriya Naik,
r/o. H.No.264, Green Valley,
Alto Porvorim, Bardez, Goa.

8. Shri Jitendra R. Gaonkar,
r/o. Pirla, Quepem, Goa.

9. Shri Savio Francisco Marian P.
R/o. 523/A, Odlem Bhat,
Taleigao, Ilhas, Goa 403 003. .... Petitioners.

V/s.

1. State of Goa
through its Chief Secretary,
having office at Secretariat,
Panaji, Goa.

2. The Director General of Police,
State of Goa, having Office
at Police Headquarters,
Panaji, Goa.

3. Goa Public Service Commission,
through its Member Secretary,
having Office at EDC House,
Panaji, Goa.

4. Shri Dattaguru K. Sawant,
residing behind Laximibai
Talaulikar Hospital,
Boca de Vaca, Panaji, Goa.

5. Milind M. Bhuimbar,
age 22 years, residing at
House No.1012/17,
Goa Police Housing Co-op. Soc.
Jos Waddo, Succurro,
Porvorim, Bardez, Goa 403 501,

6. Loveleen Jeane Dias,
major of age, residing at
C/o. Delia Dias,
Bambolim, Ilhas, Goa.

7. Navlesh Suresh Dessai,
major of age, residing at
Veroda, Cuncolim, Goa.

8. Paresh Rajanikant Navelkar,
major of age, residing at
H.No.325, Durgawadi,
Taleigao, Ilhas, Goa.

9. Devyani H. Ambetkar,
major of age, residing at
H.No.161, Cobo Vaddo,
Tivim, Bardez, Goa.

10. Ramkrishna S. Mangeshkar,
major of age, residing at
D-3-E, Govt. Quarters,
Altinho, Panaji, Goa.

11. Roopa A. Kharde,
major of age, residing at
H.No.87-39,
Near Govt. High School,
Pandavwadi, Headland Sada,
Vasco-da-Gama, Goa.

12. Deepak Madhuker Pednekar,
major of age, residing at
H.No.248, Caper Wada,
Curti, Ponda, Goa.

13. Pravin Prakash Gawas,
Major of age, residing at
H.No.899, Gokulwadi,

Sanquelim, Bicholim, Goa.

14. Tejaswini K. Gaunker,
Major in age, residing at
B1-F4, Vijayaanagar Housing
Society, Corlim,
Ilhas, Goa 403 110.

15. Virendra B. Veluskar,
major of age, residing at
H.No.280, Behind Kamat Plaza,
Near Shri Ganesh Temple,
St. Inez, Panaji, Goa.

16. Krishna P. Sinari,
major of age, residing at
H.No.153, Pimpal Wada,
P.O. Marcela, Amona,
Bicholim, Goa.

17. Narayan A. Chimulkar,
Major of age, residing at
B-1-12, Police Quarters,
Porvorim, Goa.

18. Kalindi G. Naik Burye,
major of age, residing at
House No.87, Souza Vaddo,
Quitla, Aldona, Bardez, Goa.

19.Praven Powar,
major of age, residing at
D/A-3, H.No.1012/2,
Goa Police Housing Co-op. Society,
Zoswaddo, Succorro,
Porvorim, Bardez, Goa.

20.Prajyot S. Fadte,
major of age, residing at
Akhada, St. Estevem, Ilhas, Goa.

21. Nilesh K. Dhaigodkar,
major of age, residing at
H.No.D-17, at Dhaigodem,
Keri, P.O. Kerim,
Ponda, Goa.

22. Shailesh A. Narvekar,
Major of age, residing at
H.No.2, Maimulem,
Vasco-da-Gama, Goa 403 802.

23. Sanjay G. Dalvi,
major of age, residing at
C-10-6, Junta Quarters,
Pajifond, Margaon, Goa.

24. Tushar G. Lotlikar,
Major of age, residing at
St. Anthony's Ward,
Guirim, Bardez, Goa.

25. Kapil alias Ramnath B.
Nayak major of age, residing
at H.No.183, Dhoirem,
Rivona Via Quepem, Goa 403 705.

26. Brendan E.F. D'Souza,
major of age, residing at
H.No.217, Bairo Alto,
Ribandar, Goa 403 006.

27. Sudesh M. Velip,
Major of age, residing at
H.No.33, Velipwada,
Kavrem, Quepem, Goa.

28. Paresh G. Naik,
Major of age, residing at
Lotus Apartment,
F.L. Gomes Road,
Vasco-da-Gama, Goa.

29.Rahul T. Parab,
major of age, residing at
B/2, Asilo Hospital Qtrs.,
Feiro Alto, Mapusa Goa- 403 507.

30. Pradeep M. Tamhanker
Major of age, residing at
H.No.98/1, P.O. Tivim
Industrial Estate, Karaswado,
Bardez, Goa.

31. Ravindra D. Dessai,
Major of age, residing at
Canacona, Goa.

32. Neenad G. Deulkar,
major of age, residing at
Post Sal, Madlawada,
Assonora, Goa.

33. Bristano Peixoto,
Major of age, residing at
H.No.56/B, Cavorim,
Covatem, Chandor,
Goa - 403 714.

34. Job Rajesh,
Major of age, residing at
C/o. Thomas Job,
Nagargao, Valpoi,
Goa 403 506. ..... Respondents.

Mr. M.S. Sonak with Ms. Pooja Bharne, Advocates for the Petitioners.

Mr. A.N.S. Nadkarni, Advocate General with Mr. H.R. Bharne, Govt. Advocate for respondents No.1 and 2.

Mr. S.K. Kakodkar, Sr. Advocate with Mr. Joel J. de Souza, Advocate for respondents No.4 to 34.

WRIT PETITION NO.180/2002

Mr. Victor J.A. Lobo,
B-52, Angelina Filomena
Complex, Moloco Merces, Goa. .... Petitioner.

V/s.

1. State of Goa
through its Chief Secretary,
having office at Secretariat,
Panaji, Goa.

2. The Director General of Police,
Police Headquarters,
Panaji, Goa.

3. Shri Dattaguru K. Sawant,
residing behind Laximibai
Talaulikar Hospital,
Boca de Vaca, Panaji, Goa.

4. Milind M. Bhuimbar,
age 22 years, residing at
House No.1012/17,
Goa Police Housing Co-op. Soc.
Jos Waddo, Succurro,
Porvorim, Bardez, Goa 403 501,

5. Loveleen Jeane Dias,
major of age, residing at
C/o. Delia Dias,
Bambolim, Ilhas, Goa.

6. Navlesh Suresh Dessai,
major of age, residing at
Veroda, Cuncolim, Goa.

7. Paresh Rajanikant Navelkar,
major of age, residing at
H.No.325, Durgawadi,
Taleigao, Ilhas, Goa.

8. Devyani H. Ambetkar,
major of age, residing at
H.No.161, Cobo Vaddo,
Tivim, Bardez, Goa.

9. Ramkrishna S. Mangeshkar,
major of age, residing at
D-3-E, Govt. Quarters,
Altinho, Panaji, Goa.

10. Roopa A. Kharde,
major of age, residing at
H.No.87-39,
Near Govt. High School,
Pandavwadi, Headland Sada,
Vasco-da-Gama, Goa.

11. Deepak Madhuker Pednekar,
major of age, residing at
H.No.248, Caper Wada,
Curti, Ponda, Goa.

12. Pravin Prakash Gawas,
Major of age, residing at
H.No.899, Gokulwadi,
Sanquelim, Bicholim, Goa.

13. Tejaswini K. Gaonker,
Major in age, residing at
B1-F4, Vijayaanagar Housing
Society, Corlim,
Ilhas, Goa 403 110.

14. Virendra B. Veluskar,
major of age, residing at
H.No.280, Behind Kamat Plaza,
Near Shri Ganesh Temple,

St. Inez, Panaji, Goa.

15. Krishna P. Sinari,
major of age, residing at
H.No.153, Pimpal Wada,
P.O. Marcela, Amona,
Bicholim, Goa.

16. Narayan A. Chimulkar,
Major of age, residing at
B-1-12, Police Quarters,
Porvorim, Goa.

17. Kalindi G. Naik Burye,
major of age, residing at
House No.87, Souza Vaddo,
Quitla, Aldona, Bardez, Goa.

18.Praven Powar,
major of age, residing at
D/A-3, H.No.1012/2,
Goa Police Housing Co-op. Society,
Zoswaddo, Succorro,
Porvorim, Bardez, Goa.

19.Prajyot S. Fadte,
major of age, residing at
Akhada, St. Estevem, Ilhas, Goa.

20. Nilesh K. Dhaigodkar,
major of age, residing at
H.No.D-17, at Dhaigodem,
Keri, P.O. Kerim,
Ponda, Goa.

21. Shailesh A. Narvekar,
Major of age, residing at
H.No.2, Maimulem,
Vasco-da-Gama, Goa 403 802.

22. Sanjay G. Dalvi,
major of age, residing at
C-10-6, Junta Quarters,
Pajifond, Margaon, Goa.

23. Tushar G. Lotlikar,
Major of age, residing at
St. Anthony's Ward,
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24. Kapil alias Ramnath B.

Nayak major of age, residing
at H.No.183, Dhoirem,
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25. Brendan E.F. D'Souza,
major of age, residing at
H.No.217, Bairo Alto,
Ribandar, Goa 403 006.

26. Sudesh M. Velip,
Major of age, residing at
H.No.33, Velipwada,
Kavrem, Quepem, Goa.

27. Paresh G. Naik,
Major of age, residing at
Lotus Apartment,
F.L. Gomes Road,
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28.Rahul T. Parab,
major of age, residing at
B/2, Asilo Hospital Qtrs.,
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Major of age, residing at
H.No.98/1, P.O. Tivim
Industrial Estate, Karaswado,
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Major of age, residing at
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major of age, residing at
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32. Bristano Peixoto,
Major of age, residing at
H.No.56/B, Cavorim,
Covatem, Chandor,
Goa - 403 714.

33. Job Rajesh,
Major of age, residing at
C/o. Thomas Job,
Nagargao, Valpoi,
Goa 403 506. ..... Respondents.

Mr. Valmiki Menezes, Advocate for the Petitioner.

Mr. A.N.S. Nadkarni, Advocate General with Mr. H.D. Naik, Addl. Govt. Advocate for respondents No.1 and 2.

Mr. S.K. Kakodkar, Sr. Advocate with Mr. Joel J. de Souza, Advocate for respondents No.3 to 33.

CORAM : N.N. MHATRE &
P.V. HARDAS, JJ.

DATE OF RESERVING THE JUDGMENT: FEBRUARY 03, 2004.

DATE OF PRONOUNCING THE JUDGMENT : MARCH 12, 2004.

J U D G M E N T : (Per MHATRE, J.)

These three petitions challenge the select list dated 16.4.2002 for the post of Police Sub-Inspector of the Police Department of the Government of Goa. The challenge arises mainly on the ground that after the commencement of the selection process, new criteria were introduced as a result of which, the petitioners have been prejudicially affected and as a result have not been selected.

2. The undisputed facts are as follows :

On 6.2.2001, an advertisement appeared in the news papers inviting applications to the post of Police

Sub-Inspector in the Police Department of the Government of Goa. The qualifications prescribed in the advertisement were as follows :

(I) Degree of a recognized University or equivalent.

(II) Age 20 to 25 years as on 31.01.2001

(III) Physical requirements :

(IV) Should pass written and oral examination conducted by the Department.

(V) Knowledge of Konkani, desirable knowledge of Marathi.

Twenty six posts were to be filled by male candidates and five by female candidates. The number of reserved posts was also advertised. Since the petitioners possessed the required qualifications as sought in the advertisement, the petitioners applied for the posts within the specified times i.e. on or before 26th February, 2001. In December, 2001, the petitioners received a letter from the Superintendent of Police, Head Quarters, Panaji stating that preliminary selection tests for the post of Police Sub-Inspector were fixed on 12.12.2001. The petitioners were directed to appear for the preliminary

tests along with their original certificates. The petitioners successfully completed and passed the preliminary selection tests. On 25.1.2002, the petitioners were informed that the written examination for the posts was to be held on 10.2.2002. The syllabus for the written examination was also forwarded to the petitioners. On 7.3.2002, the petitioners were directed to produce original as well as certified copies of certain documents, which included the various certificates showing that the petitioners had completed their Graduation and achieved excellence in extra-curricular activities and other fields of study. Accordingly, all the petitioners produced these certificates. The petitioners were informed on 18.3.2002 when they produced these certificates that additional marks were proposed to be allotted to certain heads under caption "Career Profile". On 3.4.2002, the petitioners attended the oral interview. On 16.4.2002, a list of selected candidates was displayed on the notice board. However, the petitioners were not found to be successful. Being aggrieved by the omission of their names from the list of successful candidates, the petitioners have filed the present petition. According to the petitioners, they learnt for the first time through a press

statement issued on behalf of the Police Department on 12.12.2001 that 35 marks would be allotted for written tests for recruitment to the post of Police Sub-Inspector, 15 marks for oral interview and 50 marks for what was described as "Career Profile". The press statement, however, did not specify as to what comprised the career profile. According to the petitioners, the entire selection process was vitiated as the persons were selected to the post of Police Sub-Inspector de hors the Recruitment Rules. The petitioners have, in their petitions, submitted that despite specific criteria being stipulated in the Recruitment Rules, which all the petitioners satisfied, the respondents No.1 and 2 i.e. the State of Goa and the Director General of Police had added to this criteria after the selection process had commenced.

3. After filing of these petitions, an affidavit of A.K. Singh, Superintendent of Police was filed in Writ Petition No.138/2002. According to the affiant, the selection process adopted was within the format of the Recruitment Rules. It was disclosed in the affidavit that the Government on 10/12/2001 had evolved a mode of evaluation of the merits of the candidates, splitting the assessment into two rounds.

In round one, only the eligible candidates who possessed the essential qualifications would be called for a physical test which would carry no marks, but an incumbent would have to be qualified to be considered in the second round for evaluation on merit. This assessment was based on 50 marks allotted for career profile, 35 marks allotted for written examination and 15 marks allotted for oral examination. The total marks being 100. The break-up of marks allotted for each head was as follows :

Written Test (I)	
i. General Knowledge	10 marks.
ii. General (English)	15 marks.
iii. Aptitude test	10 marks.
Oral interview (II)	15 marks.
Career profile (III)	
i. Graduation.	10 marks.
ii. Graduation above 60 %	10 marks.
iii. Post Graduation	5 marks.
iv. Law Graduate	5 marks.
v. Computer literate	5 marks.
vi. N.C.C. (C) Certificate	5 marks.
vii. Sportsmen (National/ International level)	5 marks.
viii. Sportsmen at University/ State level.	5 marks.
University 3 marks) subject to maximum State 5 marks) of 5 marks.	
Total	100 marks.

4. The successful candidates who are

respondents No.3 to 33 in Writ Petition No.138/02 and 180/02 and respondents No.4 to 34 in Writ Petition No.172/02 support the selection process adopted by the respondents No.1 and 2. Almost all of them have individually filed affidavits-in-reply to the petitions basically stating that the selection process was conducted properly and that the petitioners could have no grievance as they had all appeared for the oral interview and the written examination and that all the candidates appearing for the selection were judged on the same basis. Two more affidavits have been filed on behalf of respondents No.1 and 2 in Writ Petition No.138/2002. Muktesh Chander holding charge of Superintendent of Police, in his affidavit has stated that the selection process started on 12.12.2001, the written test was held on 10.2.2002, the selected candidates were asked to undergo Medical Test and were sent for training for a period of 2 years. According to the affiant, the career profile came to be introduced in order to prevent any nepotism and discrimination as the allotment of marks for the oral interview always led to arbitrariness in the selection process. A supplementary affidavit was then filed on 9.7.2003 by Shri R.S. Krishnia, Superintendent of Police mentioning the expenses incurred for training of

the selected candidates and the expenses incurred on payment of their salaries after their appointments to the post of Police Sub-Inspector.

5. Writ Petition No.138/2002 came up for admission before the Division Bench on the basis that the select list dated 16.4.2002 of the post of Police Sub-Inspector of the Police Department of Government of Goa was illegal. The Division Bench of this Court was pleased to stay the select list and the respondents were directed not to issue appointment letters on the basis of the select list. It appears that respondents No.3 to 33 moved the learned Single Judge during the vacation when the stay granted earlier was vacated on the basis of an application made by respondents No.3 to 33. While admitting these petitions i.e. Writ Petitions No.138/2002 and 172/2002 on 4.6.2002, by way of the interim relief, this Court directed that the appointments made, if any, to the post of Police Sub-Inspector would be subject to the result of the petitions.

6. The facts involved in Writ Petition No.180/02 are similar. The petitioners in this petition challenge the select list principally on the

ground that by introduction of the 'career profile', the petitioners have been prejudicially affected. Moreover, according to the petitioner, a sportsman who had represented the State at the National Football level as well as represented the Country in the International Football tournaments and also had participated in football tournaments at the University level has been neglected. The grievance of the petitioner in this petition is that assuming the career profile could be used, respondent No.3 i.e. one of the successful candidates, did not possess the requisite height of 171 cms., which was an essential qualification under the Recruitment Rules.The marks given to the said respondent was not as stipulated in the career profile. According to the petitioner, a person who had played only at the State level was given more marks than himself although he had played at the international level.

7. In Writ Petition No.172/2002, the petitioners No.3 and 7 are the female candidates, who had applied for the post of female Sub-Inspector. The challenge in this petition is similar to the challenge made out in Writ Petition No.138/2002, except for the fact that the petitioner No.1 in this petition claims

that he is eligible to be selected to the post of reserved against sportsman category and that the select list did not name any person against the reserved post for a sportsman category.

8. Mr. Lotlikar, learned Counsel appearing for the petitioner in Writ Petition No.138/2002 submits that the advertisement published on 6.2.2001 contained certain criteria which the the candidates were required to fulfil for being selected to the post of Sub-Inspector. This advertisement was issued in accordance with the Recruitment Rules then prevailing. He submits that by introduction of the career profile after the selection process had commenced, the first and second respondents had committed a grave and serious illegality prejudicially affecting the career of the petitioners. He submits that the Recruitment Rules cannot be substituted by stipulation made in the career profile. The petitioners had learnt of the introduction of the career profile only through a press statement. The number of marks to be allotted as per the career profit was learnt by them only when the affidavit in reply was filed. He submits that the selection process could be considered to have commenced after the last date of the receipt of the applications

as per the advertisement. The last date scheduled in the advertisement was 26.2.2001 and, therefore, according to the learned Counsel, that is the date when the selection process commenced. He relies on the Judgments in the case of Praveenkumar Trivedi vs. Public Service Commission M.P., 1986 Lab. I.C. 1990; Om Prakash Shukla vs. Akhilesh Kumar Shukla & ors., AIR 1986 SC 1043; Shri Durgacharan Misra vs. State of Orissa and ors., AIR 1987 SC 2267; P. Mahendran and ors. vs. State of Karnataka and ors. (1990) 1 SCC 411; Union of India and ors vs. Raj Kumar Gupta & Ors., 1995 Supp. (2) SCC 607 and Chandra Prakash Tiwari and ors. vs. Shakuntala Shukla and ors. (2002) 6 SCC 127.

9. Mr. Valmiki Menezes, learned Counsel appearing for the petitioner in Writ Petition No.180/2002 adopts the arguments of Mr. Lotlikar and urges that the weightage of marks given to the successful candidates was not based even on the career profile. He submits that assuming without admitting that the career profile could have been introduced, the marks allotted to the respondents No.3 to 33 (in Writ Petitions No.138/2002 and 180/2002) and respondents No.4 to 34 (in writ Petition No.172/2002) (both sets of

respondents, hereinafter, after referred to as the "successful candidates") were not in accordance with the career profile.

10. Mr. Sonak, learned Counsel appearing on behalf of the petitioners in Writ Petition No.172/2002 while adopting the arguments of Mr. Lotlikar, submits further that the process of selection commences with the issuance of the advertisement. He submits that the career profile contained in the Circular dated 12.10.2001 are the executive instructions and cannot supersede the Recruitment Rules framed under the Proviso to Article 309 of the Constitution. He submits that in fact respondents No.1 and 2 treated this as a draft amendment to the Recruitment Rules for the post of Police Sub-Inspector - male as well as female-as it was obvious from the letter dated 10.10.2001. He submits that when the first and the second respondents had considered that this career profile and allocation of marks on the basis of it would be considered as an amendment to the Recruitment Rules, the respondents No.1 and 2 could not supplant the criteria which was already provided for in the Recruitment Rules. He submits that the career profile does not bring about the mere cosmetic change to the selection process, but

is a substantive change. He also submits that the Memorandum of 7.3.2002 directing the candidates to produce certain certificates would not impute knowledge of the career profile to the petitioners. In fact, the petitioners came to know of the existence of a feature known as the career profile, which was to be considered at the time of selection, only on the basis of the press statement issued. However, the petitioners did not know the details of the career profile which was disclosed only after the petitions were filed. He relies on the Judgment in the case of Maharashtra State Road Transport Corpn., and ors. vs. Rajendra Bhimrao Mandve and ors., (2001) 10 SCC 51; District Collector & Chairman, Vizianagaram Social Welfare Residential School Society, Vizianagaram and another vs. M. Tripura Sundari Devi, (1990) 3 SCC 655; Satpal and others vs. state of Haryana and ors., 1995 Supp. (1) SCC 206; Ahmedabad Municipal Corporation vs. Virendra Kumar Jayantibhai Patel (1997) 6 SCC 650; Raj Kumar and ors. vs. Shakti Raj and ors., (1997) 9 SCC 527 and Praveenkumar Trivedi vs. Public Service Commission M.P. (Supra).

11. The learned Advocate General for respondents No.1 and 2 in all the petitions i.e. the

State of Goa and the Director General of Police, as well as respondent No.3, Goa Public Service Commission in Writ Petition No.172/2002 submits that the petitioners have taken a calculated risk by appearing for the selection and, therefore, they had no right to challenge the selection process. The career profile, according to the learned Advocate General, was introduced only to bridge the yawning gap in the Recruitment Rules, as the Recruitment Rules based on written examination and an oral interview led to nepotism and arbitrariness in the selection process which then tended to be arbitrary. The career profile only gave a guideline and was in the form of executive instructions to the Departmental Promotion Committee while judging the candidates at the oral interview. Such a guideline could always, according to the learned Counsel, be introduced for recruitment for a selection post which undisputedly was the case for the post of Police Sub-Inspector. The learned Counsel then urges that no action be taken in the matter as the first respondent-Government has already incurred an expense of Rs.66.00 lakhs for the training of the successful candidates, as also towards the wages payable to them as they have been appointed to the posts; there being no interim orders restraining the Government from

effecting such appointments. He submits that the selection process was in two stages. The preliminary test and the written test formed the first stage and the submission of the documents required for career profile and the oral interview formed the second stage of selection. Once the petitioners were aware that the career profile would be taken into consideration while selecting the candidates, they were estopped by their conduct from challenging the selection process. Learned Counsel relies on the Judgment in the case of Chandrakant Prakash Tiwari and ors. vs. Shakuntala Shukla and ors. (2002) 6 SCC 127 and G.N. Nayak vs. Goa University and others, 2002 AIR SCW 442 in support of his submissions. As regards the grievance made by Menezes appearing for the petitioner in Writ Petition No.180/2002 that the petitioner in that petition had been allotted lesser marks than respondent No.33 although the petitioner was an international football player, respondents No.1 and 2 have disclosed that the marks allotted to the petitioner for the sports was 10, whereas for respondent No.33 only 5 marks were allotted and, therefore, the grievance made by the petitioner in that petition regarding non-implementation of the career profile correctly has been answered.

12. Mr. Kakodkar, the learned Counsel for the successful candidates submits that the selection process started when the written test was conducted on 12.12.2001. According to the learned Counsel, the introduction of the career profile and allotment of marks to the heads contained in the career profile was not derogatory to the provisions of the recruitment rules. The Recruitment Rules, according to the learned Counsel, stipulated the minimum qualification of a candidate. The career profile only aided in the selection process by charting comparative assessment of merits of the candidates and no prejudice could be considered to have been caused to the petitioners. According to the learned Counsel, it was only a method of short-listing the candidates and was not a method used for introducing changes to the Recruitment Rules, midstream, after the selection process had commenced. The learned Counsel then submits that there was no prayer in any of the petitions to strike down the letter dated 10.10.2001, which introduced the career profile. He then submits that the male petitioners cannot have any grievance against the female candidates who have been selected, nor can the petitioners have any grievance against respondent No.3 who has been appointed in the category reserved for O.B.C., since

the petitioners do not belong to this category. Learned Counsel then urges that the petitioners could not make a grievance and espouse the cause of others who could have applied if the career profile was made known in the advertisement itself. According to the learned Counsel, all the candidates had been judged by same yardstick and, therefore, no prejudice could be said to have been caused to the petitioners. He relies on the Judgment in the case of Sant Ram Sharma vs. State of Rajasthan and others, AIR 1967 SC 1910; P. Tulsi Das and ors. vs. Govt. of A.P. and ors. (2003) 1 SCC 364; Haryana Public Service Commission vs. Amarjeet Singh and others, 1999 SCC (L&S) 1451; Hon'ble Chief Justice, High Court of Bombay and ors. vs. B.S. Nayak and others, (2001) 9 SCC 763; Madan Lal and ors. vs. State of J & K and ors., (1995) SCC 486; Om Prakash Shukla vs. Akhilesh Kumar Shukla and ors., 1986 (Supp) SCC 285; State Bank of India and Subsidiary Banks Employees Union and another vs. General Manager (Operations), State Bank of India and ors. and G.N. Nayak vs. Goa University (2002) 2 SCC 712. Learned Counsel also submits that short-listing of candidates is permissible when there is a large number of eligible candidates and by introduction of the career profile, the respondents No.1 and 2 had

merely supplemented the Recruitment Rules. He relies on the Judgments in the case of Madhya Pradesh Service Commission vs. Navnit Kumar Potdar, (1994) 6 SCC 293; Government of Andhra Pradesh vs. P. Dilip Kumar, (1993) 2 SCC 319; Parveen Jindal vs. State of Haryana, 1993 Supp (4) SCC 70 and Union of India vs. T. Sundararaman, (1997) 4 SCC 664.

13. We directed the learned Advocate General to place before us marks obtained by the petitioners and the successful respondents in the selection process. From the statement submitted before us, it is obvious that the successful respondents have benefited by the introduction of the career profile. There has been a quantum jump in their marks on account of the marks allotted in the career profile to Law Graduates, Post-Graduates and Graduates having more than 60 % marks. In fact, had the career profile not been introduced, the petitioners would in all probability have been selected. Therefore, there is no doubt that the career profile has aided the successful candidates in the selection process. The submission made on behalf of the successful candidates that no prejudice was caused to the petitioners as all candidates had been judged by applying the same yardstick is,

therefore, unsustainable. Reliance was placed on the Judgment in the case of Haryana Public Service Commission vs. Amarjeet Singh and ors., 1999 SCC (L&S) 451. The Apex Court in this case took the view that when there was no grievance made before the Court that different standards were adopted for different sets of candidates, it was inappropriate for the High Court to have examined the matter in further detail and to have allocated marks to the candidates and thereafter to direct the Public Service Commission to select them. The Apex Court held that when an uniform process has been adopted in respect of all selections, no prejudice could be said to have been caused to the candidates who were not selected. However, in the present case we reiterate that the introduction of the career profile has caused great prejudice to the petitioners.

14. Reliance is placed on the Judgments in the cases of Province of Bombay vs. Khushaldas S. Advani, AIR 1950 SC 222 and State of Haryana and another vs. Chanan Mal etc., AIR 1976 SC 1654 by Mr. Kakodkar to submit that the present case is not one where this Court should exercise its powers under writ jurisdiction and set aside the the select list. The scope of the writ jurisdiction of this Court is

delineated in these and other Judgments of the Apex Court. Bearing in mind the principles enunciated by the Apex Court, we proceed to decide these petitions. What is now required to be considered is:

1. Whether the introduction of career profile was an amendment to the Recruitment Rules ?

2. Could the career profile be introduced in the selection process, midstream, once the selection process had commenced ?

3. Assuming the action of respondents No.1 and 2 is illegal, what is the relief which the petitioners can avail of when the successful respondents have already been selected and undergone training and have also been appointed to the post of Police Sub-Inspector in the exiting vacancies ?

15. Recruitment Rules to the post of Police Sub-Inspector were framed in 1999. Under the Recruitment Rules, the post of Police Sub-Inspector is a selection post. Candidates between 20 to 25 years of age could apply. Educational and other qualifications required for direct recruitments are as follows :

(1) Degree of a recognised University or equivalent.

(2) Minimum height 5 and weight not less than 45 kgs.

(3) Should pass written and oral examination

conducted by the department.

(4) Knowledge of Konkani

Desirable : Knowledge of Marathi.

16. The advertisement issued in the newspaper was in accordance with these Rules. There was nothing to suggest that any additional criteria would be applicable to the candidates for being selected to the post of Police Sub-Inspector. What was essential was only a Degree of a recognized University, certain physical requirements and successful completion of a written test and oral interview conducted by the Department. Knowledge of Konkani was essential and knowledge of Marathi, desirable. Thus, gradation and assessment of merits was only on the basis of the oral examination and written test to be conducted by the Department. The career profile cannot be considered to be a mere supplement to the Recruitment Rules as 50 % of the marks were allocated for the career profile. This is certainly a departure from the Recruitment Rules which can by no means be brought about merely by executive instructions or letters. The first and the second respondents could not have given a go by to the recruitment rules and based the assessment of candidates on other extraneous considerations. The

submission made by learned Advocate General as well as the Counsel for the successful respondents that the career profile is only a guideline for selecting the best available candidates, cannot be accepted as by introduction of the career profile, the Recruitment Rules have taken a back seat and the marks allotted for the career profile are considered to be more important. By allotting marks under various heads stated above, the first and the second respondents had reduced the marks which were to be allotted under the Recruitment Rules for the written test and the oral interview. This could not be done merely by executive instructions. Therefore, by the introduction of the career profile by a side wind, the Recruitment Rules have not been strictly adhered to.

17. Evidently, the first and the second respondents were aware that for amending Recruitment Rules a long drawn out procedure would have to be followed and the Recruitment Rules could not be amended merely by introduction of the career profile. It was, probably, for this reason that the Director General of Police was requested to send to the Government the draft amendment to the Recruitment Rules for the post of Police Sub-Inspector. Obviously, therefore, this

career profile could have been introduced at a later stage, provided the Recruitment Rules were so amended. The Apex Court in the case of Sant Ram Sharma vs. State of Rajasthan and ors. (supra) has held that although it was true that Government cannot amend or supersede statutory rules by administrative instructions, but if the rules are silent on any particular point, Government can fill up the gaps and supplement the rules and issue instructions not inconsistent with rules already framed. We are not inclined to accept the submission of the learned Counsel appearing for respondents No.3 to 33 in the present case that the respondents No.1 and 2 have merely filled up the gaps by instructions of the 'career profile'.

18. The question whether the introduction of the career profile midstream while the selection process was in progress, was legal and justified, will now have to be considered. According to the petitioners, the selection process commenced once the applications were invited and after the last date for receiving the applications. Therefore, according to them, the selection process commenced on the day after 26.2.2001, which was the last date for receipt of the

applications. On the other hand, the respondents contended that the selection process commenced when the written test was conducted on 12.10.2001. If this date is to be considered, then there is no question of the career profile having been introduced midstream. If it is considered that the selection process commenced on the day after the last date of receipt of the applications or when the preliminary test was conducted, the introduction of career profile after that stage cannot be countenanced. The Apex Court in several Judgments has laid down when the selection process could be said to have commenced. In the case of Maharashtra State Road Transport Corpn. and ors. vs. Rajendra B. Mandve and ors. (supra), the Apex Court considered whether the drivers to be recruited under the Maharashtra State Road Transport Corporation could be assigned marks for a driving test and interview. According to the petitioners, in that case, the driving test was made mandatory by issuance of a circular after selection process had commenced. The Apex Court held that reallocation of marks for an interview in the middle or after the commencement of the selection process, was impermissible. The Apex Court held that the criteria sought to be introduced long after the last date fixed for receipt of

applications and in the middle of the course of selection process, could not be applied to the selection under consideration. The Apex Court observed that the rules of the game, meaning thereby the criteria for selection, cannot be altered by the authorities concerned in the middle or after the process for selection has commenced.

19. We have no doubt that the selection process commenced much prior to the introduction of the career profile. The applications from the candidates were to be received by 26.2.2001. The selection therefore, commenced the next day. At any rate, it could be deemed to have started after the eligible candidates were invited for the preliminary test. The petitioners were directed subsequently to produce the certificates and other documents on which they based their candidacy. They were informed about the career profile only thereafter. In fact, the marks to be allotted for the career profile were disclosed only after the petitions were filed. Therefore, respondents No.1 and 2 have committed an illegality by introducing the career profile by a side wind, midstream, after the selection process commenced.

20. Once it is held that the introduction of career profile midstream was illegal, can it be said that no relief should be given to the petitioners merely because they had appeared for the interview and had gone through the selection process ? In the case of Om Prakash Shukla vs. Akhilesh Kumar Shukla and ors. (supra), the Apex Court has held that when a candidate appears for the examination without protest and thereafter realises that he had not succeeded in the examination, a writ petition filed by such a person cannot be countenanced as the same yardstick had been applied for judging the other candidates. In the case of Madan Lal and ors. vs. State of J & K and others (supra), the Apex Court held that determination of quantum of marks which were to be allocated to the competitive candidates is the factum of the interview committee and the Supreme Court would not sit as an Appellate Court over the assessment made by the Committee. It further held that once the result of the interview test on merits had been declared, a candidate who takes his chance and appears at such an interview, cannot challenge the same merely because he finds himself ultimately to be unsuccessful. Once the candidate takes a chance to get himself selected in the oral interview, he cannot challenge the same if he

appeared for the same without any protest. In the case of G.N. Naik vs. Goa University (supra), the Apex Court held that if there was a change in the eligibility criteria for the post and yet the candidates applied for the post and appeared for the interview without protest, he could not contend later on that the eligibility criteria was wrongly framed.

21.In the present case, the selection process had started immediately after the last date of the receipt of the applications. The petitioners came to know of the introduction of the career profile through a press statement and no other communication in that regard was received by them from the first and the second respondent. The petitioners, therefore, naturally appeared for the written test as well as the oral interview. They were not informed that the eligibility criteria had been changed or certain additional qualifications would enable them to get selected. By the communication of 7.3.2002 they were directed to produce the certificates in their possession which would demonstrate that they had completed their graduation and had participated in various extra-curricular activities. Certificates were also sought in respect of completion of Law or

Post-Graduate studies. However, there was no whisper in this communication as to the allocation of marks on the basis of the additional qualifications. The petitioners came to now of the marks which were to be allotted for these additional qualifications only after the affidavits of the First and the Second Respondents were filed. The allotment of the marks was made known after the selection process had commenced and in fact was completed and the selected candidates had been named.

22. The learned Advocate General and the learned Counsel for the successful candidates urge that the petitioners are not entitled to any relief as they are estopped by their conduct from availing of the same. In the case of Chandra Prakash Tiwari and others vs. Shakuntala Shukla and others (supra), the Apex Court held that an argument based on estoppel by conduct can be pressed into service when there is a precise and unambiguous representation and there is an unequivocal assurance prompting the assured to alter his position or status. In that case the Supreme Court found that the doctrine of estoppel by conduct would not be strictly applicable to the facts and circumstances of that case. As regards the right to

challenge an appointment upon due participation at the interview/selection, the Supreme Court held that it does not arise merely because the candidate finds himself unsuccessful and the result unpalatable. In the present case, the question of estoppel by conduct does not arise as the petitioners came to know of the allocation of marks in the career profile only after respondents No.1 and 2 filed the affidavits-in-reply to the petitions. Therefore, we do not see any reason as to why the challenge is not maintainable. The introduction of the career profile would have to be considered as prospective and if at all it could have been introduced, it would only be by an amendment of the Recruitment Rules. In any event, the advertisement issued should have disclosed the basis on which the candidates were to be assessed and that additional marks would be given to the candidates who had more than the essential qualifications as per the Recruitment Rules.

23. Now, although, we are of the view that the introduction of the career profile midstream, after selection process had commenced is illegal and vitiates the entire selection process, we have to further consider whether the reliefs claimed by the petitioners

can be granted at this stage. According to the learned Advocate General as well as the Counsel for the successful candidates, no reliefs can be granted at this stage to the petitioners, assuming they were entitled to be considered for selection. They submit that the successful candidates have already undergone the entire training after they have been appointed as Police Sub-Inspectors. The learned Advocate General has submitted that the exchequer has incurred an expense of Rs.66.00 lakhs on account of entire process of training and towards salaries of the successful candidates, therefore, it would not be proper to set the clock back.

On the other hand, learned Counsel for the petitioners submit that once it is found that the selection process was not fair and proper and in accordance with the Recruitment Rules, the entire select list would have to be set aside. They submit that merely because there is a drain on the exchequer due to the training and payment of salaries to the successful respondents, the illegality committed by the present respondents No.1 and 2 should not be permitted to continue. Mr. Sonak, learned Counsel appearing for the petitioners in Writ Petition No.172/2002 relies on

the Judgment in the case of Satpal and others vs. State of Haryana and ors. (supra) where the Supreme Court has come to the conclusion that when the process of selection is found to be tainted, whatever had flowed consequent thereto must fall along with that process of selection. The Apex Court did not countenance the submission made in that case that the candidates who had been appointed on the basis of a tainted selection process should be protected as they had received training pursuant to some interim orders. The petitioners in all the petitions also submit that in view of the orders passed at the stage of admission, that, all the appointments are subject to the result of the writ petitions, no equity can be said to have been created in favour of the respondents merely because the Government has expended a large sum for the purposes of training of the selected candidates. The candidates could not have continued in service on the basis of a dubious method of selection. There is no doubt that the process of selection is entirely illegal and tainted. We do not see any reason as to why the candidates who have been selected on the basis of an incorrect, and illegal procedure followed at the time of selection should be permitted to continue in service. In the facts and circumstances of this case,

we find that the procedure adopted for selection of candidates was obviously illegal as the career profile could not have been introduced midstream, specially without giving any notice to the candidates. The first and the second respondents have committed a glaring illegality by departing from the Recruitment Rules in the process of selection of the candidates to the post of Police Sub-Inspector. As held by the Apex Court in Raj Kumar's (supra) case after considering Madan Lal's case (supra) that it is not in all cases where a candidate has taken his chance to appear in an interview and has remained unsuccessful, cannot challenge either the constitution of the Selection Board or the method of selection, as being illegal. The Apex Court in Raj Kumar's case in fact had observed that since the Government had committed glaring illegalities in the procedure to get the candidates for examination under the Rules as also the method of selection and exercise of power and the conduct of selection in accordance with the Rules, the question of estoppel by conduct does not arise. The relief granted in that case was that all candidates who were successful in the written examination were to be interviewed again and selected in accordance with the procedure laid down in the law. Those who were

appointed by virtue of the illegal selection were to continue in service till the proper selection was made and the candidates were appointed in accordance with the Rules.

22. In the case of Ahmedabad Municipal Corporation vs. Virendra Kumar Jayantibhai Patel (supra), the Apex Court held that there was no room for sympathy and equity in the matter of an appointment where the recruitment in service is governed by the Statutory Rules. The Apex Court held that the statutory recruitment rules would become nugatory or otiose and the Department would then be able to favour any person or appoint any person without following the procedure provided for in the Recruitment Rules which, in turn, lead to nepotism and arbitrariness. The Apex Court held that the persons, lesser in merit, would get preference in the matter of appointment merely on the ground of equity and compassion and it was not safe to bend the arms of law only for adjusting equity. Therefore, we have no doubt that the select list must be set aside and the appointments of the successful candidates must also be set aside.

25. As regards the submissions made by the

respondents that the petitioners had no locus to file the petitions on the ground that those who had similar or even better qualifications should have been considered for the post, we find that this submission cannot be accepted. As observed by the Apex Court in the case of District Collector vs. M. Tripura Sundari Devi (supra) that when an advertisement mentions a particular qualification and an appointment is made in disregard of the same, it is not a matter only between the appointing Authority and the appointee concerned. The Apex Court, in para (6) has observed thus :

> "It must further be realised by all concerned that when an advertisement mentions a particular qualification and an appointment is made in disregard of the same, it is not a matter only between the appointing authority and the appointee concerned. The aggrieved are all those who had similar or even better qualifications than the appointee or appointees but who had not applied for the post because they did not possess the qualifications mentioned in the advertisement. It amounts to a fraud on pubic to appoint persons with inferior qualifications in such circumstances unless it is clearly stated that the qualifications are relaxable. No court should be a party to the perpetuation of the fraudulent practice."

24. On a consideration of all the pleadings and the case law cited before us, as well as the

statement produced by the learned Advocate General, showing marks allotted to the candidates, we are of the opinion that there is no doubt that by introduction of the career profile, the respondents No.1 and 2 have committed an illegality. The successful candidates have gained an undue advantage over the petitioners in the matter of selection and, therefore, the selection of respondents No.3 to 33 (respondents No.4 to 34 in WP.172/2002) must be set aside. The submission that the petitioner could not have a grievance against the candidates who belonged to the O.B.C. or the reserved categories or for the female posts also cannot be countenanced, as, had the career profile been properly advertised, in all probability other more meritorious candidates would have applied for the post of Police Sub-Inspector.

27. In the circumstances, Rule made absolute with costs.

NISHITA MHATRE, J.

P.V. HARDAS, J.

ssm.

28. The learned Advocate General and Mr. D'Souza for the successful candidates seek stay of the operation of the Judgment. Stay granted for eight weeks.

NISHITA MHATRE, J.

P.V. HARDAS, J.

ssm.